

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON AGRICULTURE, LIVESTOCK AND IRRIGATION

Call to Order: By **CHAIRMAN RIC HOLDEN**, on March 14, 2001 at 3:10 P.M., in Room 422 Capitol.

ROLL CALL

Members Present:

Sen. Ric Holden, Chairman (R)
Sen. Pete Ekegren, Vice Chairman (R)
Sen. Mike Halligan (D)
Sen. Greg Jergeson (D)
Sen. Arnie Mohl (R)
Sen. Linda Nelson (D)
Sen. Gerald Pease (D)
Sen. Corey Stapleton (R)
Sen. Jon Tester (D)
Sen. Tom Zook (R)

Members Excused: Sen. Walter McNutt (R)

Members Absent: None.

Staff Present: Laramie Cumley, Committee Secretary
Doug Sternberg, Legislative Services

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 455, HB 552
Executive Action: HB 455, HB 552

HEARING ON HB 455

Sponsor: REP. DAVE LEWIS, HD 55, Helena

Proponents: Laura Zuemer, Trout Unlimited
John Youngberg, Montana Farm Bureau and Montana
Stockgrowers Association
Mike Murphy, Montana Water Resource Association

Stan Bradshaw, Big Blackfoot Chapter of Trout Unlimited

Jeff Barber, Montana Wildlife Federation

Opponents: None

Opening Statement by Sponsor:

REP. DAVE LEWIS, HD 55, Helena, said this bill is a proposal to improve irrigation systems that they have in his district. He said they would like to change the in-stream flow appropriation language to allow land owners and water right owners to enter into longer term agreements for leases of in-stream flow. This would allow them to do major improvement for irrigation systems. He discussed the current law. He said this would enable people to do ditch linings, or pivots and enable them to leave more water in the stream. He said the House added some language on page 2, line 15. He read this amendment.

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Proponents' Testimony: Laura Zuemer, Trout Unlimited, said their organization works to find creative ways to keep water in-stream to support healthy rivers. When landowners enter into a voluntary agreement to lease irrigation water rights to benefit in-stream flow they are trying to address keeping the river healthy. This bill will extend the amount of time for which a water right can be leased from 10 to 30 years. This 30-year leasing right is only available if it is linked to irrigation efficiency. Water leasing has had a good history so far and was created to solve water scarcity problems. She said right now Fish, Wildlife and Parks has the authority to enter into long term lease agreements and this bill will allow private individuals and entities to do the same. To install an irrigation system or to line a ditch is very expensive and in order for organizations like Trout Unlimited to raise this kind of capital or get a grant they need the longer period of time for guaranteeing this water will be protected. She said as more watershed groups are preparing for drought, Trout Unlimited has developed a voluntary drought response plan and many irrigators have voluntarily reduced their water use. Long term efficiency projects that will increase the amount of base flows and water in a river making voluntary efforts more successful.

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John Youngberg, Montana Farm Bureau and Montana Stockgrowers Association, said there were several water wars during the 1970s and 1980s at the Legislature. He said in the 1995 session they brought forth water leasing that appeased both the conservationist and the agricultural community. There are not a lot of laws concerning this area because it is very costly. No one wants to make a big investment if they only have a lease for a five or 10-year period. This bill will help people make those investments more feasible.

Mike Murphy, Montana Water Resource Association, said this is a win-win situation for both agriculture and the environment.

Stan Bradshaw, Big Blackfoot Chapter of Trout Unlimited, said in the last 10 years they have worked with agriculture groups and have succeeded in processing many miles of stream restoration in cooperation with a variety of different land owners. He said right now they are planning on doing major restoration on the North Fork of the Blackfoot River and this bill will help with the financing of this project.

Jeff Barber, Montana Wildlife Federation, rose in support of HB 455.

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Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. JON TESTER asked if a person, who used to flood irrigate goes to sprinkler irrigation and they have some water left over that they are not using for irrigation purposes, can they sell that right for a 30-year period of time.

Curt Martin, DNRC, said that is correct.

SEN. TESTER asked if two years after they sign the agreement and deregulation kicks in and they can't afford a sprinkler irrigation system can they go back to flood irrigation.

Curt Martin said yes they would have to go back through the change process to get approval or change methods by using the same amount of water. The idea of the change process is to make sure that they are not using any more water than they are allowed.

SEN. TESTER asked why is there a termination date on the bill?

Stan Bradshaw said in case this does not work they provided a sunset date.

SEN. RIC HOLDEN asked if there was a contract for the unused water and the irrigator wanted his water back would they have a reconsideration or a new contract with Trout Unlimited or whoever had the contract.

Curt Martin said that would depend upon the individual contract. The state's only concern would be if in the change process, would the water be allowed to go back and be used the same way it had been used historically.

SEN. HOLDEN asked what kind of protections are there for the landowner if a landowner enters into this 30-year agreement with Trout Unlimited and after 30 years Trout Unlimited hired an attorney and maintained those water rights.

Mike Murphy said the ownership of the water right is not transferring hands it is simply leasing.

SEN. HOLDEN said there have been some claims taken away in litigation because people didn't recognize that they owned the water.

Curt Martin said there is specific law that says you cannot abandon your water rights for the in-stream leasing program.

SEN. HOLDEN asked if this section of law should be mentioned in this statute.

Curt Martin said he felt it was already covered.

SEN. TOM ZOOK asked could they have a storage project plan.

Curt Martin said yes, they could store this water and this would be a mechanism to help those people fund that storage project.

SEN. ZOOK stated last year there was concern by irrigators along the Yellowstone that they were going to be shut off because of low water. He asked if these irrigators have a prior water right could they be shut off.

Curt Martin stated when someone leases their water right under this program they assume that priority date. But the only way to get that water right enforced is through the lessor of the water right.

SEN. HOLDEN asked with the amendment on page 2, line 16 where the word "new" is inserted why is this here and is it even needed.

Mike Murphy said they wanted this to proceed from this point forward and the word "new" make that language more clear.

Closing by Sponsor:

REP. LEWIS stated they have come to agreement among all of these diverse groups and the amendments make this bill stronger.

HEARING ON HB 522

Sponsor: **REP. JIM SHOCKLEY, HD 61, Victor**

Proponents: **Mike Murphy, Montana Water Resource Association**
Jon Metropoulos, Flathead Joint Board of Control

Opponents: none

Opening Statement by Sponsor:

REP. JIM SHOCKLEY, HD 61, Victor, stated this bill allows the irrigation district to charge a larger fee than now provided for administering water. He stated in the Bitterroot valley they are subdividing and the ditch rider has several small pieces to turn the water out on. The maximum fee that can be charged is \$75.00 per parcel and this is not enough. If a 100-acre piece is subdivided into 10-acre plots then they could charge more money to administer the water. He read line 15-21, page 1 of the bill.

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Proponents' Testimony:

Mike Murphy, Montana Water Resource Association, stated this bill allows those districts that are experiencing growth due to subdivision to deal with added administrative costs associated with trying to get water to those smaller tracts of ground.

Jon Metropoulos, Flathead Joint Board of Control, stated the growth of subdivisions has become a problem in their area and they support this bill with the amendments.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. MIKE HALLIGAN stated if there is a ditch that goes one way on 100 acres and there is an administrative cost to serve that 100 acres how do they determine the actual costs. Does it depend on the number of homes or plots in the area?

Mike Murphy stated if a 100-acre tract is broken into 5-acre tracts each one of those tracts would pay an administrative fee. As the land is broken into smaller tracts it becomes more difficult to get water to those areas and the equipment costs, administrative costs, etc. increase.

SEN. HALLIGAN asked how they figure water assessments in these new subdivisions, etc.

Mike Murphy stated there are two potential assessments. An assessment charge is put in for repayment of construction of the project and the activities that took place associated with initially putting the entire project in place. The fee that is being proposed is in addition to that assessment and is used to make sure that the water is delivered in the district.

SEN. HALLIGAN stated there are many homeowners in Missoula who do not have access to the water. He asked if those people would still be charged for that water even if they were not using it.

Mike Murphy stated at this point, yes, the district does have the authority to charge for this water. There are several reasons for this, mostly whatever is set up in the subdivision covenants.

REP. SHOCKLEY stated the way this is drafted they cannot raise the fee over \$75 unless they can demonstrate that it costs them more to administer this water.

SEN. ZOOK stated if you are charged a fee and you don't get any water or service, it is not right to charge those people the fee.

REP. SHOCKLEY stated a service charge is a good way to describe what this bill deals with. In Missoula County there are people who have settled on irrigated land and because of the way it is subdivided they no longer can get any water. The district still charges them money because they belong to the district. This situation will exist with or without this bill. This bill will probably not affect Missoula County because there is no water being delivered to these subdivisions.

{Tape : 1; Side :B ; Approx. Time Counter : 14.2 }

SEN. ZOOK stated there should not be a fee for services that have not been rendered.

REP. SHOCKLEY said if he had never introduced this bill the Missoula situation would not change. If this bill passes, the situation in Missoula still will not change. This is designed for areas like the Bitterroot and the Flathead where people are subdividing, but they are keeping their water rights. He said this allows the district, if they can demonstrate that it costs them for example \$85 in administration costs, then they can raise it to that amount for each parcel to deliver the water.

SEN. ARNIE MOHL stated what if there is a subdivision and some people do not want the water, do they have to pay for it.

REP. SHOCKLEY stated if someone buys that land they are obligated to pay the district because that is one of the requirements. He said even if people do not use the water they are still going to get charged to use it.

Mike Murphy said an individual could go through a petition process to get their acreage out of an irrigation district. He said if there were 500 tracts that wanted to petition out they would have to go through a legal process to do that. Another example would be if there was a Bureau of Reclamation project and they wanted out of the district, they cannot petition acreage out of the district unless they have at least as many acres coming into the district as there is going out.

Jon Metropoulos said there are two different payments from the landowner. One is the administrative fee that pays for administrative costs on a yearly basis. The second is the fee from the landowner to pay for the construction of the project and is amortized over 30 to 50 years. He said it is that portion which causes problems when someone is not getting water or they want out. But they are obligated to pay that share when they buy the land for the construction of that project. If they are allowed to get out of this fee then it raises it for the remaining landowners. He said this bill is only dealing with operating costs.

Closing by Sponsor:

REP. SHOCKLEY stated this bill allows a surcharge to be raised if the cost of distributing water in a district goes up to deliver the water.

{Tape : 1; Side : B ; Approx. Time Counter : 25.3 }

EXECUTIVE ACTION ON HB 552

Motion: SEN. ZOOK moved that **AMENDMENT HB055201.ADS BE ADOPTED.**
EXHIBIT (ags58a01)

Discussion:

SEN. PETE EKEGREN asked if the fees in Missoula would be paid off someday for construction, etc.

REP. SHOCKLEY stated those improvements that have been done to the property are being amortized over time. And this bill does not deal with that.

SEN. EKEGREN asked if the administrative costs are ongoing but the initial construction will be paid off.

REP. SHOCKLEY stated in the Bitterroot they have to maintain dams and those people that belong to the district pay for that maintenance. But there are also bonds for the initial construction of the dam and they will eventually be paid off. This is not an infrastructure bill, this deals with service.

Vote: Motion **carried 10-1 with Stapleton voting no.**

Motion: SEN. ZOOK moved that **HB 552 BE CONCURRED IN AS AMENDED.**

Discussion:

SEN. HALLIGAN stated he disagrees with the administrative charges as they are somewhat confusing on who is going to decide how to raise these costs. It is confusing as to whether it will be an administrative fee or a maintenance fee. He said in most irrigation districts if a landowner does not want to be in the district they work with them to try and get this petition. However it is very difficult because they need every landowner in this district to sign the petition.

SEN. HOLDEN stated he would not like to get into this line of questioning. He said everyone in the district is being charged an administrative charge in the district and it may exceed \$75 only if it can be proven why and that is all this bill is talking about.

SEN. HALLIGAN said there could be a lot of people who did not ask for the service and they raise these fees it could be another complicated issue.

SEN. COREY STAPLETON said he is concerned that going from the \$75 maximum to opening this fee up may cause the district to charge for anything and everything.

SEN. HOLDEN stated the people that live in an irrigation district understand the importance of this kind of language. He said if he chooses to pay and keep up his taxes on his place, but several other people want to petition out and they leave the district it can be very costly for the landowners left in the district. Irrigators are not big spenders in the state and if a district decides to increase water costs there will be some input on this from the people living in the district before those rates are increased.

SEN. STAPLETON stated these charges need to be based on what the costs actually are, not by how big the district is. He said the language is too vague for him.

SEN. ZOOK said this should not be a state mandate, but up to the local districts to decide these costs. He said there needs to be some flexibility.

Vote: Motion **carried 6-4.**

{Tape : 2; Side :A ; Approx. Time Counter :7.6 }

EXECUTIVE ACTION ON HB 455

Motion/Vote: **SEN. NELSON** moved that **AMENDMENT HB045501.ADS BE ADOPTED. Motion carried unanimously. EXHIBIT(ags58a02)**

Motion: **SEN. NELSON** moved that **HB 455 BE CONCURRED IN AS AMENDED.**

Discussion:

SEN. HOLDEN stated if any irrigator is going to enter into one of these contracts with the fish people they need to make sure they have a clause to get out of the lease. If a rancher ties into a 30-year contract and he does not have enough water, he needs a way to be able to get out of that lease to have enough water.

SEN. STAPLETON asked with the termination date of four years would those actions that took place during those four years be honored if they decided not to do this.

SEN. HOLDEN said any contract that is accepted before the termination date would be a valid contract.

Vote: Motion **carried unanimously.**

ADJOURNMENT

Adjournment: 4:30 P.M.

SEN. RIC HOLDEN, Chairman

LARAMIE CUMLEY, Secretary

RH/LC

EXHIBIT (ags58aad)